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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,232	10/09/2003	Paul Cheung	P/1941-30	9987
2352	7590	09/22/2005	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			SOOHOO, TONY GLEN	
			ART UNIT	PAPER NUMBER
			1723	
DATE MAILED: 09/22/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/682,232

Applicant(s)

CHEUNG, PAUL

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claim 5 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 15. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 5-8, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Bennett 973847.

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Bennett teaches a handle, A, planar utility portion B made of loop C, C,C, and across piece H,I, G connected via lugs or bent regions I, I connecting to the tow legs J, J of the handle to provide a pivoting of the work piece.

5. Claims 1-2, 5-8, and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hertzberg 1735278.

Hertzberg teaches a handle, 56, planar utility portion 10, 10 made of loop of wire and across piece 10a connected via lugs or bent region 40 having two "legs" formed on 40 opposed sides to encompass the element 10a by the extending legs 40 so that the handle to provide a pivoting of the work piece.

6. Claims 1-8, and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith 781917.

Smith teaches a handle 15, planar utility portion 10, 11, 13, made of loop with a main loop 13, to 13 and a wire coil 10 about the loop 13, and a crosspiece at the ends connecting the top bent over portion as seen in the upper numeral 13 to the cross piece to the left and right of the upper numeral 13 and via lugs or bent regions as seen at the upper numeral 13, and connecting to the two legs 14 of the handle 15 to provide a pivoting of the work piece. It is noted that in use of the device it is deemed that the planer utility portion will capable of pivoting at the cross piece.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett et al 973847.

The Bennett (et al) reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the particular shape of the loop.

Absent any unexpected results, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the relative the shape of the loop utility portion such that the system may more be in a advantageous aesthetic arrangement, whereas it is nothing more than one of numerous configurations a person of ordinary skill in the art would find obvious in order to provide a more advantageous aesthetic, or easily constructed system since it has been held that, absent any unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. In re Dailey, 149 USPQ 47 (CCPA 1976).

9. Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hertzberg 1735278..

The Hertzberg 1735278 reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the particular shape of the loop.

Absent any unexpected results, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the relative the shape of the loop utility portion such that the system may more be in a advantageous aesthetic arrangement, whereas it is nothing more than one of numerous configurations a person of ordinary skill in the art would find obvious in order to provide a more advantageous aesthetic, or easily constructed system since it has been held that, absent any unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. In re Dailey, 149 USPQ 47 (CCPA 1976).

10. Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith 781917.

The Smith reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of the particular shape of the loop.

Absent any unexpected results, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the relative the shape of the loop utility portion such that the system may more be in a advantageous aesthetic arrangement, whereas it is nothing more than one of numerous configurations a person of ordinary skill in the art would find obvious in order to provide a more advantageous aesthetic, or easily constructed system since it has been held that, absent any

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unexpected result, a mere change in form or shape on the basis of suitability is a matter of obvious mechanical design choice. In re Dailey, 149 USPQ 47 (CCPA 1976).

### ***Response to Arguments***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Renner Des 406216, Washburn 948750 and 1134170, Eurisch et al 5947595, Barnes et al 2836402, and Wiely et al 3031707 all disclose handles with a cross piece and a utility portion.

12. Applicant's arguments with respect to claim newly amended and newly presented claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

13. No claims have been indicated as presenting any patentable subject matter. ALL CLAIMS HAVE BEEN REJECTED.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Applicant has amended the claims to present a new combination of elements which has a differing scope of the previously acted upon claims. The newly presented and amended claims now encompass a scope of invention which is now deemed as not distinguishing over the prior art, and has now necessitated a new grounds of rejection.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

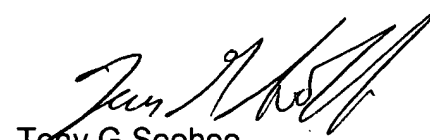
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo  
Primary Examiner  
Art Unit 1723